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Table of Contents

Letter from the Editors 2

Presidential Transition 4
- Recent Executive Orders and Legal Actions on DEI and Affirmative Action 5
- DEI-Related Executive Orders and Their Reach 5
- Legal Pushback and Court Intervention 5
- Mounting Pressure from State AGs and Conservative Groups 6
- 24 U.S. States Commit to the Paris Agreement Goals after Trump Exits the Accord 6
- Trump Administration Nixes Environmental Justice 6
- IRA Funding 7
- President Trump Targets State Laws That Burden Energy Production 9

SEC Commissioner Priorities 10
- Climate Disclosure Rule 11
- Shareholder Proposals 11
- CEO Pay Ratios 11

Perks and Planes 12
- SEC Charges Retailer with Failing to Disclose Aircraft Perks 12

Preparing for EDGAR Next 13

SEC Issues New Staff Legal Bulletin on Shareholder Proposals and C&DI on Schedule 13G Eligibility 14

CTA Updates: FINCEN Guts Beneficial Ownership Reporting Requirements under the Corporate Transparency Act 16

NASDAQ Board Diversity Rule Vacated 18

Meet "Y'All Street," as Finance Flourishes in Texas 20
- Nasdaq's Strategic Move 20
- A Growing Financial and Tech Hub 21
- Everything's Bigger in Texas 21
- Implications for the Future 21

Proxy Advisor Updates: Board Diversity Expectations in Flux—What Public Companies Should Know Now ... 22
Board Diversity Voting Policy Changes ... 23
Key Takeaways ... 23

California Climate Laws Litigation Updates ... 24

CARB LCFS Amendments ... 26

Net-Zero Banking Alliance Changes ... 28
What is the NZBA? ... 29
What Banks Have Left? ... 29
What's Next? ... 29

Update on EU Sustainability Agenda Reform ... 30

Climate Superfund Laws ... 32

Greenwashing Update ... 34
Catching Up on Cases ... 34
Berrin v. Delta Air Lines, Inc. ... 34
ASIC v Vanguard Investments Australia Ltd. ... 34
New Cases to Watch in 2025 ... 35
Earth Island Institute v. Coca-Cola Company ... 35
Dorris v. Danone Waters of America ... 35
State of Maine v. BP p.l.c. ... 36
Ramos v. Amazon.com, Inc. ... 36

Endnotes ... 37

Key Contacts ... 38

Letter from the Editors

We have seen, a mere few months into President Trump's second term, a remarkably transformational set of priorities across the federal government, which have had dramatic impacts on the private sector generally and public companies in particular. There has been a new focus on completely overhauling global trade and causing companies to rethink their supply chains. Additionally, there has also been a broad push for deregulation and slashing perceived government bloat, aggressive scrutiny of corporate and government initiatives regarding diversity, equity and inclusion ("DEI"), and reversing course on the climate priorities of the Biden administration while turbocharging American energy. The changes and priorities already unfurled in the second Trump presidency have served as a significant shock to the system of corporate America and many of the initiatives, priorities and reporting obligations that public companies have been developing and coming to rely on over the last several years. Time will tell how all these new initiatives and priorities will unfold in the coming months and years, but what is certain for now is that very little is certain. As leaders of companies, readers are no doubt seeking to better understand how to prepare for, how to budget for, and how to allocate resources for, the significant upheaval facing your business and the broader economy.

While, in recent years, environmental, social and governance ("ESG") demands from shareholders were certainly challenging for many issuers to manage, and expectations seemed to be accelerating year-after-year, there seemed to be some level of predictability to the direction of travel: more disclosure, more demands for the energy transition to a lower carbon economy, and a heightened expectation on aspects of human capital management and an inclusive workplace. 2025 has seen a recalibration of all of this and the pendulum has clearly swung in the other direction. While some of the anti-ESG fervor was starting to take root before the change in administrations, President Trump's actions, particularly those focused on his "anti-climate agenda", have only furthered the anti-ESG backlash we began to see take hold in the last year or so. For example, ESG funds have experienced record outflows since President Trump took office in January 2025, although some outflow occurred in 2024 due to other factors (such as increased 'greenwashing' risks causing funds to tamp down their marketing of ESG-alignment). Similarly, J.P. Morgan's exit from the Net-Zero Banking Alliance ("NZBA") earlier this year marked the latest (and last) departure of U.S. banks from the coalition, signaling shifts in sentiment largely resulting from increased political and regulatory scrutiny. (*See page 29 for more information*). Environmental Justice ("EJ") also has not escaped unscathed, with President Trump's executive orders calling for agencies to terminate all EJ offices, positions, programs and activities. (*See page 6 for more information*).

In early January, Gary Gensler stepped down from his role as Securities and Exchange Commission ("SEC") Chair and, in April, Chair Atkins was sworn in. Chair Atkins has indicated several priorities for the SEC during his tenure, including nixing CEO Pay Ratio disclosures and shifting the landscape for shareholder proposals and engagement (*see page 11 for more information*). Chair Atkins has also indicated agreement with Acting Chair Uyeda's decision to end the SEC's defense of its climate-related disclosures rule, although litigation remains pending in the Eighth Circuit with several states requesting the case be held in abeyance until the SEC makes clear how it intends to proceed with the rule. The SEC has also reframed what it means to be an "activist" shareholder, through updating the rules of engagement for large institutional investors who might no longer be able to rely upon Schedule 13G filings, but could be deemed to be subject to the more onerous Schedule 13D framework. As we describe in this issue of our newsletter (*see page 15 for more information*), this change could make "sunny day" shareholder engagement with institutional investors feel very different than in years past. Shareholder votes may become even more opaque than they have already been as these large shareholders fear being accused of exerting "activist" tendencies through the powerful use of their voting blocs.

Notwithstanding the changes at the federal level (DOJ, SEC and other regulatory changes), several states have demonstrated continued commitment to addressing climate change. Following President Trump's executive order withdrawing the United States from the Paris Agreement for the second time, a bipartisan coalition of 24 climate-focused state governors (the U.S. Climate Alliance) announced their intentions to remain committed to the goals of the Paris Agreement. In December 2024, New York followed Vermont by signing into law the Climate Change Superfund Act, requiring certain fossil fuel producers and refiners with sufficient connections to the state to pay into a "climate Superfund" an amount commensurate with the entity's past greenhouse gas emissions ("GHG") over an eighteen-year period (*see page 32 for more information*). However, this law, among others, is now the subject of a recent executive order regarding "state overreach." This executive order directs the Attorney General to identify all state laws (with prioritization of those purported to address climate change, ESG, EJ, carbon or GHG emissions, and funds to collect carbon penalties or taxes) that "burden" domestic energy resources and which may be "unconstitutional, preempted by Federal law, or otherwise enforceable." Additionally, both the New York and Vermont climate Superfund laws have been challenged by the federal government in federal court.

It is clear that this time of uncertainty is set to continue and navigating the complexities of federal and state laws, regulation, legislation, sentiment, and focus with respect to climate change and ESG is now more difficult than ever. On top of this shifting landscape, changes abound with Nasdaq's recent announcement that it will establish a regional headquarters in Dallas, Texas ("Y'all Street", *see page 20 for more information*). Nasdaq is also in the news for other reasons, with the Fifth Circuit striking down the stock market's board diversity requirements on the basis that the SEC exceeded its statutory authority when approving the rules (*see page 18 for more information*). Following this, U.S. proxy advisory firms and U.S. asset managers have significantly softened diversity-oriented voting policies (*see page 22 for more information*).

Continuing to understand, and remaining on top of, all the ongoing developments in this space is a full-time job. Add on the need to appropriately prepare for and comply with these shifting laws and expectations, well informed and practical guidance is a must. The pendulum has clearly swung. It remains to be seen how far it will continue to swing away from ESG topics or if we can expect a reversion at some point in the not-too-distant future. Please remember that V&E is here to assist you navigate this very fluid landscape.

Presidential Transition

Recent Executive Orders and Legal Actions on DEI and Affirmative Action

In 2025, Diversity, Equity, and Inclusion ("DEI") programs—once widely embraced across corporate America and government institutions—have come under scrutiny following two executive orders issued by President Donald Trump, coupled with mounting political blowback on DEI initiatives generally. The executive orders, aimed at dismantling affirmative action and curbing DEI initiatives, have sparked legal challenges, created confusion over compliance, and intensified pressure on companies already facing criticism from conservative activists and red-state attorneys general.

In early 2025, President Donald Trump issued two executive orders—Executive Order 14173 on January 21 (the "J21 Order") and an earlier Order on January 20 (the "J20 Order")—that together marked an aggressive federal rollback of affirmative action and DEI policies long used by federal contractors and private businesses. In recent years, public companies in particular had faced mounting pressure from stakeholders—including shareholders, employees, and customers—to increase their focus on DEI. The J20 and J21 Orders, which target both public and private sectors, have since triggered widespread legal challenges and introduced significant uncertainty regarding the future of DEI initiatives.

DEI-Related Executive Orders and Their Reach

Under the J21 Order, federal agencies must identify and investigate up to nine private sector entities that may be engaging in unlawful DEI practices. Each agency is instructed to focus on specific sectors—such as publicly traded companies, large nonprofit organizations, foundations with assets over $500 million, professional associations (like state bar or medical groups), and higher education institutions with endowments exceeding $1 billion. Agencies are required to flag the "most egregious and discriminatory" DEI programs within these sectors and submit a strategic enforcement plan to the U.S. Attorney General. This plan is intended to discourage what the administration characterizes as "illegal DEI."

The J20 and J21 Orders seek to eliminate "equity-related" federal programs and contracts and to restrict DEI efforts among federal contractors and grantees. The J21 Order explicitly revokes previous directives, including the long-standing Executive Order 11246, which had mandated affirmative action for federal contractors since 1965. The J21 Order further requires federal contractors and grantees to certify that their DEI programs comply with anti-discrimination laws, prohibiting any practices deemed to offer "illegal preferences." It also directs the Department of Labor, Department of Justice, and other federal agencies to investigate and potentially prosecute DEI efforts that allegedly violate civil rights laws—though the term "illegal DEI" is never clearly defined.

Legal Pushback and Court Intervention

On February 21, 2025, U.S. District Judge for the District of Maryland, Adam B. Abelson, issued a nationwide preliminary injunction blocking major provisions of both executive orders (J20 and J21). The court found several elements of the orders unconstitutionally vague and likely to infringe on First Amendment rights. Specifically, the injunction halted:

- The termination of federal "equity-related" contracts and grants;
- The certification requirement for federal contractors; and
- The DOJ's directive to pursue enforcement actions against private sector "illegal DEI" programs.

The court emphasized that vague terminology—such as "illegal DEI"—could chill protected speech and lead to arbitrary enforcement, prompting organizations to suppress even lawful DEI initiatives out of fear of legal exposure. On March 14, 2025, however, the U.S. Court of Appeals for the Fourth Circuit, granted the government's motion to stay the preliminary injunction, allowing the government to enforce the executive orders while the challenges are pending.

Mounting Pressure from State AGs and Conservative Groups

This federal action coincides with a broader campaign by red-state attorneys general and conservative organizations, including think tanks and advocacy groups, targeting DEI initiatives across the private sector. These groups have increasingly targeted corporations, universities, and nonprofits through litigation, regulatory complaints, and coordinated public pressure.

Taken together, the executive orders, legal rulings, and coordinated pressure from conservative officials and activist groups are reshaping the DEI landscape in the United States. While the courts have temporarily blocked the most aggressive components of the federal rollback, the broader momentum has already led many private sector organizations to assess DEI initiatives. As litigation continues, the future of DEI remains uncertain—requiring businesses to navigate a rapidly evolving and increasingly fraught legal and political environment.

24 U.S. States Commit to the Paris Agreement Goals after Trump Exits the Accord

On January 20, 2025, President Trump issued an executive order, "*Putting America First in International Environmental Agreements,*" which withdraws the United States from the Paris Agreement under the United Nations Framework Convention on Climate Change (the "Paris Agreement") along with "any agreement, pact, accord, or similar commitment made under the United Nations Framework Convention on Climate Change" ("UNFCCC"). President Trump's second withdrawal from the Paris Agreement implies that, to the extent the Paris Agreement was driving domestic policy under the Biden Administration, that support has been removed. For example, regulations geared toward mitigating the impacts of climate change, such as the EPA's methane rule for upstream oil and gas production, greenhouse gas standards for power plants, and emissions standards for light, medium, and heavy-duty vehicles, could be re-evaluated now that the Trump administration has challenged the international premise for climate action. But even if there is a re-evaluation, a formal rulemaking process would likely be required to make actual changes. Though not explicit, this executive order appears to include various other agreements, such as the Bali Action Plan (2007), the Copenhagen Accord (2009), the Cancun Agreements (2010), the Durban Platform for Enhanced Action (2012), the Baku Agreements (2024), and the implementation of the Green Climate Fund. This executive order sets the stage for the United States to renegotiate the terms and conditions of the UNFCCC in a fashion that is more aligned with the Trump administration's priorities.

Despite President Trump's January 2025 executive order, the U.S. Climate Alliance, a bipartisan coalition of 24 climate-focused state governors, announced their intentions to remain committed to the Paris Agreement's goals. The co-chairs of the U.S. Climate Alliance, New York Governor Kathy Hochul and New Mexico Governor Michelle Lujan Grisham, confirmed these intentions in a letter delivered to the UN Climate Change Executive Secretary, which highlighted states' "broad authority under the U.S. Constitution" to "advance climate solutions" and the ongoing efforts of the coalition states to implement climate-related policies, such as statewide and regional carbon markets, clean energy standards, and methane reduction programs. Additionally, the governors committed to tracking and reporting on their progress to the international community, including at the UN Climate Change Conference in Brazil in November 2025. The impact of the United States' withdrawal at the federal level, however, is uncertain at this time.

Trump Administration Nixes Environmental Justice

Environmental Justice ("EJ") considerations were a mandated part of federal permitting—going back as far as the Clinton Administration—and were most recently strengthened during the Biden Administration. Several of President Trump's executive orders represent a sharp departure from the previous administration's focus on EJ in permitting and enforcement decisions. "*Ending Radical and Wasteful Government DEI Programs and Preferencing*" directs federal agencies to "terminate, to the maximum extent allowed by law" all EJ offices, positions, programs, and activities within 60 days. As a practical matter, this executive order removes much of the administrative infrastructure and leadership developed to support EJ initiatives at the federal level. In response to this executive order, the EPA placed 171 employees in both Diversity, Equity, Inclusion, and Accessibility and Environmental Justice on administrative leave.[1] Further, since the Executive order was issued, EJ Screen, the EPA's EJ mapping and screening tool, has been removed from the EPA website.

Notwithstanding this, whether expressly or under another name, EJ concerns are still likely to be addressed in some form in connection with activities subject to NEPA, if for no other reason than environmental and other groups are likely to continue to challenge permits under the APA based on allegedly insufficient analyses of impacts on disadvantaged communities. Similarly, following Trump's executive order, we expect a practical and potentially explicit recission of the EPA's *April 2021 Starfield Memo* directing stronger environmental enforcement in EJ communities. Although not expressly the target of the new executive orders, it is likely that EPA will discontinue efforts (largely unsuccessful to date) to leverage Title VI of the Civil Rights Act to secure burdensome EJ-related permitting conditions. Finally, although prior administrations never succeeded in imposing substantive EJ requirements on state permitting activities without state cooperation, states likely will have a divided approach to EJ going forward. Some states like New Jersey, New York, and Massachusetts that have recently passed EJ laws and regulations may forge ahead with those efforts. Others may follow the lead of the federal government. How any state-level EJ requirements may interplay with federal actions where state approvals are required remains to be seen, but this is likely to be source of future tension between the states and the federal government.

IRA Funding

Section 7 of "*Unleashing American Energy*" directs all agencies to immediately pause the "disbursement" of funds "appropriated" through the IRA or the Infrastructure Investment and Jobs Act (Public Law 117-58), including but not limited to funds for electric vehicle charging stations made available through the National Electric Vehicle Infrastructure Formula Program and the Charging and Fueling Infrastructure Discretionary Grant Program. Agencies are further directed to review their processes, policies, and programs for issuing grants, loans, contracts, or any other financial disbursements of such appropriated funds for consistency with the law and the policy outlined in Section 2 of the executive order. Subsequent guidance from the Office of Management and Budget ("OMB") emphasized that the pause applies only to appropriations that contravene the policies established in Section 2, which promotes policies such as encouraging oil and gas exploration and production on federal lands and waters, establishing the U.S. as the leading producer of critical minerals, and eliminating the electric vehicle mandate. Agencies are required to submit a report to OMB and the NEC within 90 days detailing the results of their review.

Pursuant to Section 7, DOE is likely to suspend work on all conditional loan guarantees, grant awards that have been announced but not finalized, and all pending loan guarantee and grant applications while it determines which ones are contrary to the administration's policies. For finalized grant awards, DOE is likely to give each a hard look, and to the

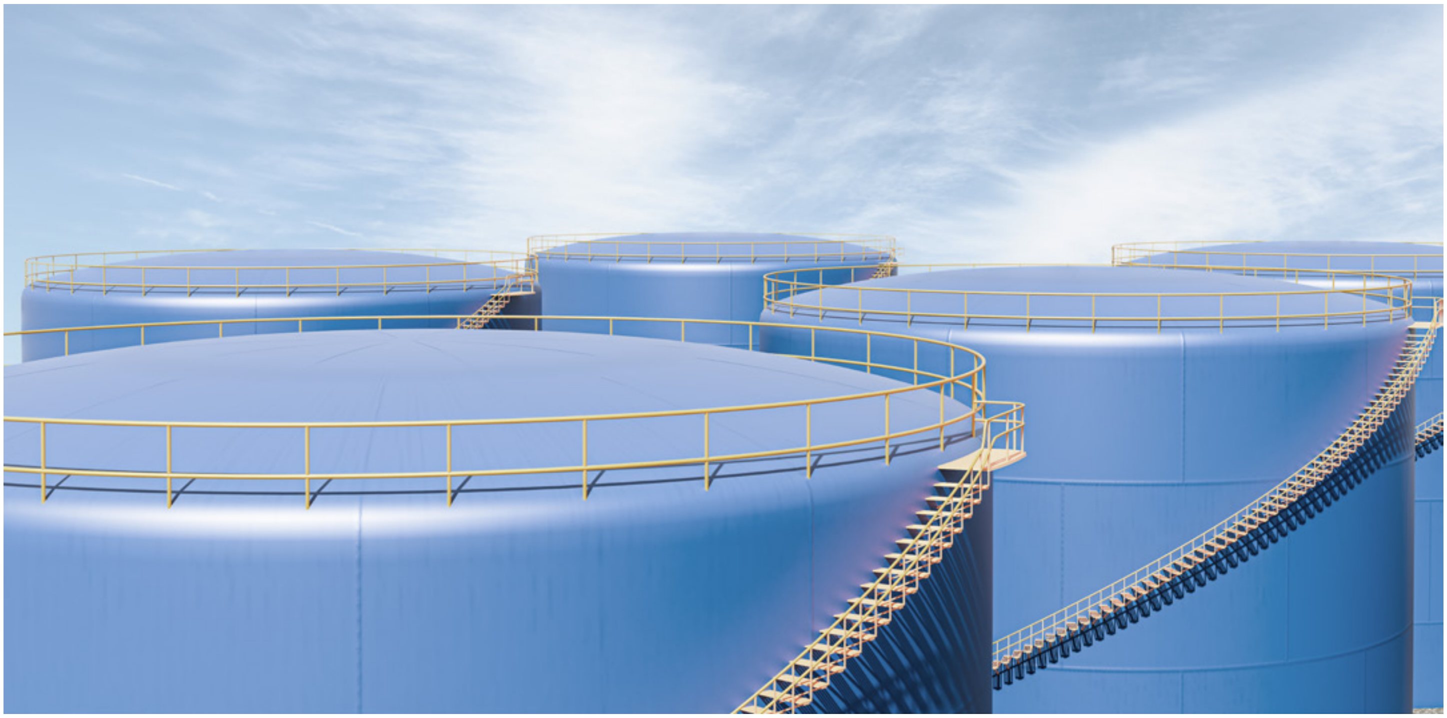
degree contrary to the administration's policies, suspend or terminate them where permissible under the award terms. On the other hand, projects that are deemed to advance the administration's priorities will likely be allowed to move forward following DOE's review. We expect that projects related to biofuels, critical minerals, hydropower, and nuclear energy resources will be more likely to proceed given the express support of such resources in Section 3 of *Unleashing American Energy*. Finally, we expect DOE will continue to disburse funds where the spending is not discretionary, either pursuant to the terms of the statutes or because DOE has a binding commitment with a counterparty (for example, under a closed loan guarantee).

There continue to be questions around the Administration's plans related to government funding, including DOE grant funding. On January 27, 2025, the acting director of OMB issued a memo indicating that a temporary freeze of government funding would take effect at 5 p.m. ET on January 28, 2025. Then, on January 28th, OMB issued a separate memo saying that the pause could be as short as a day and any payment required by law will be paid without interruption or delay; later that day, an administrative stay was issued by a U.S. District Judge. On January 29th, the OMB issued a further directive, stating that its January 27th memorandum implementing the freeze has been rescinded, although that does not appear to impact the executive order's larger directive for a pause on certain disbursements.

Unsurprisingly, the OMB's memo was quickly challenged in multiple lawsuits, including one brought by a coalition of nonprofits and industry associations and another by a collection of state attorneys general. In both those cases, the district court judges issued preliminary injunctions, prohibiting OMB from implementing its memo. More recently, on March 13, 2025, environmental and public interest groups filed a complaint against various agencies that appropriate IRA funding for continuing to withhold IRA and Infrastructure Investment and Jobs Act funds.[2] In an April 15, 2025 order, Judge Mary McElroy of the U.S. District Court for the District of Rhode Island issued a ruling enjoining those agencies from "freezing, halting, or pausing on a non-individualized basis" funding that was appropriated under the IRA or the Infrastructure Investment and Jobs Act and was already awarded to recipients.[3] In her order, Judge McElroy acknowledged the court's inability to adjudicate on the soundness of a president's agenda, but ultimately found that "[a]gencies do not have unlimited authority to further a President's agenda, nor do they have unfettered power to hamstring in perpetuity two statutes passed by Congress during the previous administration." Each of these injunctions have been appealed by the respective agencies, and with many of the funds still frozen, there remains uncertainty regarding the future of funding appropriated under these laws.

Separately, since being signed into law, the IRA has promoted significant investment in energy projects and technologies through the extension, expansion, and creation of a number of tax credits. These incentives impact a broad swath of "green" technologies, provide substantial subsidies for standalone storage and hydrogen, incentivize carbon capture, encourage domestic manufacturing and mining, and promote the installation of EV charging equipment. Executive orders do not have the power to rescind, amend, or terminate tax credits or benefits existing under the U.S. federal income tax code, and *Unleashing American Energy* and subsequent OMB memos make no mention of tax credits, let alone attempt to expressly unwind or terminate any tax benefits currently existing under the IRA or otherwise. Any changes to those provisions would require an act of both houses of Congress and significant time and effort.

On May 12, 2025, the House Ways and Means Committee released proposed legislation that, if passed and enacted into law, would aggressively roll back a range of IRA credits and programs. As discussed in more detail in our recent *Insight*, the proposed legislation, as currently drafted, would make sweeping changes to many individual and residential credits (including for electric vehicles, residential solar property, and energy efficiency property) and accelerate the termination of credits for clean hydrogen production and nuclear facilities. However, the proposed legislation is a long way from becoming law. First, it must weather amendments proposed by pro-business moderate Republicans and an intraparty fight over the IRA's state and local income tax deductions before it reaches the House floor. House Republicans are also significantly divided over other aspects of the proposed legislation that are unrelated to the IRA, such as proposed cuts to Medicaid. Additionally, the Senate will get a swing at further modifications. Congressional leaders seek to place an IRA reform bill on the President's desk by July, but whether that deadline is met—and what the bill will entail—remains to be seen.



President Trump Targets State Laws That Burden Energy Production

In April 2025, President Trump issued an executive order titled "*Protecting American Energy From State Overreach*," which directs the United States Attorney General to identify and halt the enforcement of state laws and civil actions that burden energy production and may be preempted by federal law or are otherwise unconstitutional, as further discussed in our recent Insight. The executive order, which was designed to advance President Trump's agenda of achieving "American energy dominance," directs the Attorney General to prioritize taking action against state laws that address climate change; ESG initiatives; environmental justice; GHG emissions; and the establishment of funds to collect carbon penalties or carbon taxes. The executive order specifically identifies the recent Vermont and New York "climate Superfund" laws, discussed in more detail below, and the State of California, which has long been at the forefront of GHG and climate change regulation, for "punish[ing] carbon use by adopting impossible" cap-and-trade standards and pursing "radical requirements." The executive order also targets the various climate tort and consumer protection lawsuits brought by states and localities against energy companies, asserting that such lawsuits could lead to "crippling damages."

The executive order implicates important questions about federalism and preemption, amongst others. In similar contexts, others have argued that executive actions have unlawfully infringed on state authority, wrongfully impaired the states' ability to leverage their historic "police powers" to regulate conduct within their own borders, and improperly impaired the states' abilities to act as "laboratories of democracy." Conversely, supporters of the executive order will likely argue that it is an appropriate response to state laws that have significant effects outside the borders of that state. The Department of Justice recently brought lawsuits against New York and Vermont relating to their climate superfund laws, and filed suit to stop attempts by the states of Hawaii and Michigan to pursue climate-related damage claims against potentially responsible parties. The Administration is likely to continue to file lawsuits challenging state laws with "extraterritorial" implications or seek to intervene in existing litigation implicating such issues.
This executive order represents yet another attempt by the Trump administration to combat climate change-related policies and legislation—at both the federal and state level. While any actions by the Attorney General pursuant to the executive order will likely be challenged, the executive order adds to the ongoing uncertainty related to climate-related state laws and the impacts such laws may have on businesses.

SEC Commissioner Priorities

Paul Atkins was sworn in as the new SEC Chairman on April 21, 2025. Mr. Atkins' appointment brings the composition of the SEC board to three Republican appointees and one Democratic appointee, with one seat vacant. Having previously served as SEC Chairman from 2002 to 2008, Mr. Atkins' appointment provides additional insights into where the SEC priorities may be headed.

Climate Disclosure Rule

On March 27, 2025, the SEC announced it had voted to end its defense of its climate-related disclosures rules. The announcement comes on the heels of then-acting Chairman Mark T. Uyeda's statement on February 11, 2025, in which he requested the Eighth Circuit Court of Appeals hold off scheduling oral argument in the consolidated appeals challenging the rules in order to allow the SEC "to deliberate and determine the appropriate next steps." The SEC sent a letter to the Eighth Circuit withdrawing its defense of the rules and authorization of its counsel to advance the arguments in the brief the SEC filed in the case under the prior presidential administration. The SEC explained that the Eighth Circuit "would not need to reach the petitioners' challenges based on the First Amendment or non-delegation doctrine if [the court] sets the [r]ules aside on other grounds." The SEC yielded any oral argument time back to the Court.[4] The SEC has not yet stated whether it intends to initiate new rulemaking to remove or replace the existing rules. Chair Atkins has been a longstanding critic of the climate-related disclosure rules.

Shareholder Proposals

In February, the SEC staff significantly shifted the landscape for shareholder proposals and engagement. Staff Legal Bulletin No. 14M ("SLB 14M") rescinded the prior guidance from the Biden administration, which had made it more difficult for companies to exclude certain policy proposals under the ordinary business exclusion, particularly those related to climate change and human capital management. Under SLB 14M, the staff will once again take a company-specific approach to the analysis, considering both whether policy issue (i) transcends day-to-day management and (ii) is significant to the company's business.

Furthermore, the SEC staff issued new and revised C&DI which seemed to indicate a view by the SEC that large asset managers or other institutional investors, who in recent years have leveraged their significant proxy voting power, including implicitly using their highly influential voting guidelines to influence corporate behavior, should not receive a presumption that their activities are wholly passive.

Chair Atkins has been critical of social activism in the shareholder proposal process, noting that activists may utilize shareholder proposals as "a megaphone of free publicity through the process and through harassment of the corporations" to promote particular reforms or agenda.

CEO Pay Ratios

Chair Atkins has, in the past, indicated his view that investors face an "information-overload" from various disclosure requirements, to include the mandatory disclosure of the ratio of a CEO's pay to the median pay of the company's employees. Chair Atkins has long expressed his disapproval of the Pay Ratio Disclosure Rule, which became effective in 2017 and was intended to provide shareholders with a "company-specific metric that can assist in their evaluation of a registrant's executive compensation practices."[5] Chair Atkins has previously stated that these purportedly "minor" requirements, impose "real burdens on public companies and their shareholders who ultimately pay the costs of making these immaterial disclosures that provide no benefit to economically-driven investors."[6] Given Chair Atkins' views, it is not surprising that the SEC announced its plan to review the executive compensation disclosure requirements. The SEC announced it will hold a roundtable on June 26, 2025 to discuss potential changes to the requirements and is currently accepting public comments.

We will continue to track whether other disclosure requirements may face a similar fate. For example, it seems the mandatory disclosure of a company's use of certain conflict minerals, which the SEC adopted in 2012, may be next on the chopping block. SEC Commissioner Uyeda took aim at the Conflict Minerals Rule in his remarks at the SEC Speaks Conference on May 19, 2025, stating that "the abject failure of [the Conflict Minerals Rule] should give pause to further attempts to use the SEC's disclosure regime to achieve social or political goals."[7] Although Commissioner Uyeda made his position on the disclosure requirement clear, it is uncertain if or when the SEC will undertake action to repeal the rule or waive its requirements.

Perks and Planes

SEC Charges Retailer with Failing to Disclose Aircraft Perks

The SEC announced that it had settled charges against Express Inc., a clothing retailer, and its former CEO, for failing to disclose millions of dollars in personal use of the company's aircraft by the CEO and his family. The SEC alleged that Express and the CEO violated the federal securities laws by understating the CEO's perquisites, or personal benefits, in the company's proxy statements from 2010 to 2019.

Proxy statements must disclose executive perquisites if they exceed $10,000 in value or are not integrally and directly related to the performance of the executive's duties. The SEC's rules mandate a specific methodology for calculating the incremental cost of personal use of company aircraft. This methodology generally includes the variable costs of operating the aircraft, such as fuel, maintenance, and crew expenses.

According to the SEC's order, Express and the CEO did not properly apply this methodology and instead used a lower estimate based on a charter rate that did not reflect the actual costs incurred by the company. As a result, the SEC found that Express and the CEO understated the CEO's perquisites by more than $1.7 million over a nine-year period, representing about 23% of his total disclosed compensation. The SEC also found that Express and the CEO failed to maintain adequate internal controls and policies to ensure accurate reporting of perquisites.

Other SEC enforcement actions related to aircraft perquisites have also been notable. For instance, in 2024, the SEC charged another retailer for failing to properly disclose the personal use of company aircraft by its executives, resulting in significant penalties. Additionally, the SEC has emphasized the importance of accurate perquisite disclosures in proxy statements, highlighting several cases where companies faced enforcement actions for underreporting the costs associated with executive aircraft usage. These actions underscore the SEC's commitment to ensuring transparency and compliance with federal securities laws.

Another type of perquisite that may require disclosure in proxy statements is executive security arrangements, such as personal security guards, home security systems, or armored vehicles. The SEC's rules generally treat these arrangements as perquisites unless they are necessary for the company's business or the personal safety of the executive. The SEC has issued guidance on how to determine whether executive security arrangements are business-related or personal, and what factors to consider in calculating their incremental cost.

Companies should review their processes and procedures for identifying and quantifying perquisites, including aircraft use and executive security arrangements, to accurately capture and disclose information as required by the SEC.

Preparing for EDGAR Next

Effective March 24, 2025, EDGAR Next is the SEC's new system designed to enhance the security and traceability of EDGAR accounts and provide filers with more efficient filing methods. The system will replace the current password-based access credentials, instead limiting access to persons specifically authorized by the filer (and inclusive of the ability to trace each filing made by said individual). Each person will have individual login credentials provided by the U.S. federal government's Login.gov service and will be subject to multifactor authentication. The new system will apply to all entities and individuals that access the EDGAR filing system, with no exceptions.

Importantly, credentials must not be shared with other individuals. This means that filers will no longer be able to share their password with financial printers, law firms, or other filing agents to make EDGAR filings on their behalf, Rather, those agents would need to be authorized to make a filing—the filer's account administrator would need to delegate such filing authority. The delegated entity must then accept the invitation for the delegation to be effective.

Until September 12, 2025, filers can enroll in the new system by completing and submitting an amended Form ID. Such enrolled filers can then submit their filings by using the available Application Programming Interfaces ("APIs"), designed to provide improved stability and performance for custom filing applications, although such APIs are optional. Filers that enrolled prior to March 24, 2025, could transition to EDGAR Next using a simplified enrollment process. Filers enrolling between March 24, 2025 and September 12, 2025 can continue to file on EDGAR without any interruption, though they are not subject to the simplified enrollment process. Filers can continue to enroll between September 15, 2025 (when compliance with EDGAR Next begins) and December 19, 2025, but will not be able to file during that time period until they are enrolled. After December 19, 2025, filers will be unable to enroll, and thus not able to file on EDGAR or otherwise, until they have submitted a Form ID application and such access has been granted by SEC staff.

Various actions can be taken by existing filers now to prepare for the transition to EDGAR Next.

Please contact V&E for further discussions and guidance throughout this process.

SEC Issues New Staff Legal Bulletin on Shareholder Proposals and C&DI On Schedule 13G Eligibility

On February 12, 2025, the Division of Corporate Finance (the "Staff") of the SEC issued new guidance on Rule 14a-8 shareholder proposals, which comes one day after the Staff posted new Compliance and Disclosure Interpretations ("C&DI") in connection with shareholder communications and Schedule 13G eligibility. This new guidance underscores a significant shift in approaches to shareholder proposals and shareholder engagement by the SEC under the Trump administration, indicating a prioritization of capital formation and a pro-issuer mandate as opposed to encouraging shareholder pressure on corporate activity and disclosure.

As we discuss further in our recent insight, Staff Legal Bulletin No. 14M ("SLB 14M") rescinds prior Staff guidance pertaining to the "ordinary business exclusion," which previously made it more difficult for companies to exclude certain policy proposals under the ordinary business exclusion of SEC Rule 14a-8, such as those related to climate change and human capital management, by not requiring those proposals to demonstrate their policy issue had a particular significance to the company's business. SLB 14M also reinstates the portions of Staff Legal Bulletin Nos. 14J and 14K related to micromanagement, which consider whether a shareholder proposal "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." This may include, for instance, a proposal that seeks an intricately detailed study or report. In addition, Staff may once again consider the underlying substance of the matters addressed by the study or report, such as if the substance of the report relates to the imposition or assumption of specific timeframes or methods for implementing complex policies, as well as whether a shareholder proposal is overly prescriptive in such a manner that it limits the judgment and discretion of the board and management, as in the case of a proposal that prescribes the method and requirements for reporting on reduction of GHG emissions.

SLB 14M also revisits the "economic relevance" argument for excluding shareholder proposals, where such a proposal "relates to operations which account for less than 5%of the company's total assets at the end of its most recent fiscal year, and for less than 5%of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." The Staff returns to its prior stance of focusing on a proposal's significance to the company's business, and allowing for the exclusion of proposals that raise issues of social or ethical significance without particularizing the significance to the company's business. If not prima facie significant to the company's business, the proponent will bear the burden of showing significance, though the Staff generally views substantive governance matters as significantly related to most companies.

On February 11, 2025, the Staff also published new C&DI Questions 103.11 and 103.12. The C&DI clarify under which circumstances a shareholder's engagement with an issuer's management would disqualify the shareholder from making reports on Schedule 13G. Generally, an investor with control intent files a Schedule 13D, whereas exempt investors and investors without a control intent, including qualified institutional investors and passive investors, file a Schedule 13G. The Staff notes that, generally, a shareholder who discusses with management its views on a particular topic and how its views may inform its voting decisions, without more, would not be disqualified from reporting on a Schedule 13G. However, Schedule 13G may be unavailable in cases where the shareholder discusses with management its voting policy on a particular topic, describes how the issuer fails to meet the shareholder's expectations on such topic, and, in order to apply pressure on management, states or implies during any such discussions that it will not support one or more of the issuer's director nominees at the next director election unless management makes changes to align with the shareholder's expectations. The changes in guidance regarding 13G eligibility seem to indicate a view by the SEC that large asset managers or other institutional investors – who in recent years have leveraged their significant proxy voting power, including implicitly using their highly influential voting guidelines to influence corporate behavior – should not receive a presumption that their activities are wholly passive. This change in interpretive guidance suggests a general skepticism that these types of investors are not, in fact, passive investors and that their proxy voting and shareholder engagement activities are in reality the behaviors of active investors. Notably, this C&DI does not squarely answer the question as to whether a shareholder that publishes voting guidelines or policies that clearly indicate how it would vote (arguably with the intention that such policies will lead to changes in behavior or reporting by an issuer) might cause that shareholder to lose its eligibility to report on Schedule 13G, and as such, investors and proxy advisors may be cautious about discussing their voting guidelines and how such guidelines may affect their voting recommendations, especially concerning environmental and social issues.

CTA Updates: FinCEN Guts Beneficial Ownership Reporting Requirements Under the Corporate Transparency Act

On March 21, 2025, the Financial Crimes Enforcement Network ("FinCEN") released an Interim Final Rule ("IFR"), which substantially revises the scope of the Corporate Transparency Act's ("CTA") beneficial ownership information ("BOI") reporting requirements. The IFR incorporates various significant changes:

1. **Exemption of Domestic Entities**: The IFR revises the definition of "reporting company" to include only entities formed under the laws of a foreign country that have registered to do business in a U.S. State or Tribal jurisdiction. As a result, all entities created in the United States—including companies previously known as "domestic reporting companies"—and their beneficial owners are now exempt from BOI reporting requirements and are no longer required to file initial, updated, or corrected BOI reports with FinCEN.

2. **Foreign Reporting Companies**: Only foreign entities that have registered to do business in a U.S. State or Tribal jurisdiction by filing with a secretary of state or similar office, and that are not otherwise exempt, are required to report BOI to FinCEN. However, reporting companies are not required to report BOI for any U.S. persons, and U.S. persons are exempt from providing BOI with respect to any reporting company for which they are beneficial owners.

3. **Special Rule for Foreign Pooled Investment Vehicles ("PIV")**: Previously, a PIV meeting certain requirements only was required to report information about the single individual who exercises substantial control over the entity. Under the IFR, if the only individuals exercising such control are U.S. persons, no BOI must be reported. However, if at least one non-U.S. person exercises substantial control, the PIV must report the information of the non-U.S. person with the greatest authority over the entity's strategic management.

4. **Reporting Deadlines**: Foreign entities that became reporting companies before March 26, 2025, were required to file an initial BOI report by April 25, 2025. Foreign entities that become reporting companies on or after March 26, 2025, must file an initial report within 30 calendar days of receiving actual or public notice of registration to do business.

The IFR represents a significant gutting of the CTA's requirements as it essentially narrows the scope of the CTA to certain foreign entities. According to FinCEN, the decision to exempt domestic reporting companies is "consistent with the exemptive authority provided in the Corporate Transparency Act and the direction of the President"[8] and based on Secretary Bessent's reassessment of the balance between the regulatory burdens of BOI reporting and its utility for law enforcement, national security, and intelligence. Companies previously preparing to comply with BOI reporting should reassess their obligations in light of these drastic changes and monitor further regulatory developments.

For more information on the CTA and the IFR and how they may impact your business, please reach out to your V&E team.

NASDAQ Board Diversity Rule Vacated

Nasdaq-listed companies are no longer required to comply with the stock market's board diversity requirements following a December 2024 9-8 decision from the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit held that the SEC had exceeded its statutory authority when approving the rules.

Nasdaq's board diversity rules required companies listed on the exchange to (1) annually publicly disclose board-level diversity data (race, gender, sexual characteristics) in a matrix form and (2) have, or explain why they did not have, a certain number of diverse directors on their boards.

The Fifth Circuit, in an *en banc* hearing, rejected the SEC's argument that the board diversity rules were aimed at advancing certain of the purposes of § 78f(b)(5) of the Exchange Act. Rather, the Court determined that such purposes had no relationship to the disclosure of information required under the board diversity rules. The Fifth Circuit explained that "[it] is not unethical for a company to decline to disclose information about the racial, gender, and LGBTQ+ characteristics of its directors" and that it was "not aware of any established rule or custom of the securities trade that saddles companies with an obligation to explain why their boards of directors do not have much racial, gender, or sexual orientation diversity as Nasdaq would prefer." Nasdaq said it does not plan to appeal the ruling.

For more information, please see our Insight.


Streaming
ASDAQ

Meet "Y'all Street," as Finance Flourishes in Texas

The economic landscape in Texas is undergoing a significant transformation, positioning the state as a burgeoning financial hub that could rival New York. Nasdaq's recent announcement that it will establish a regional headquarters in Dallas is a bellwether of a broader move among financial institutions and major corporations to relocate to the Lone Star State, attracted by its favorable business environment.

Nasdaq's Strategic Move

Nasdaq, traditionally associated with its iconic Times Square location in New York City, has decided to deepen its presence in Texas by opening a regional headquarters in Dallas. This new office will host not only the company's trademark listing service but will also house parts of its technology and financial crime management businesses, which assist clients in detecting fraud and money laundering that could threaten the integrity of financial transactions.

Nasdaq's decision is no doubt influenced by other companies that have been drawn to Texas' robust economy, lower costs of living, and a favorable tax climate. The state is already home to more than 200 companies listed on Nasdaq, representing a combined market capitalization of $1.98 trillion as of December 2024. This new regional headquarters aims to further strengthen Nasdaq's relationships with its clients in the region and support the continued success of what is often referred to as the "Texas Miracle."

A Growing Financial and Tech Hub

Texas has been attracting a slew of financial institutions and tech giants in recent years. Companies like Tesla, SpaceX, Chevron, Caterpillar, Oracle, and Hewlett Packard Enterprise have all moved significant operations to the state. The New York Stock Exchange ("NYSE") has also announced plans to launch an electronic exchange in Texas, and the start-up Texas Stock Exchange, backed by heavyweights like BlackRock and Citadel Securities, is gearing up for a launch early next year.

Governor Greg Abbott and other state officials have been vocal about their commitment to creating a pro-business environment. The establishment of the specialized Texas Business Courts and legislative efforts to entice companies to reincorporate in the state are part of this strategy. These initiatives aim to make Texas not just a home for capital but a home for capital markets.

Everything's Bigger in Texas

The Texas Legislature recently adopted legislation (SB 1057) allowing certain companies with a nexus to Texas to adopt ownership thresholds for shareholders seeking to submit proposals. A nationally listed corporation[9] with either its principal office in Texas or that has been listed on a stock exchange with its principal office in Texas, can avail itself of the new law by affirmatively electing to be governed by the new law, which states that shareholders who seek to submit a proposal must, as of the date of the proposal, hold voting shares of the company of at least $1 million in market value or 3 percent of the company's voting shares, and must continue to hold the shares for at least six months prior to and throughout the duration of the company's annual meeting for which the proposal is submitted. The shareholder must also solicit at least 67 percent of the voting power of shares entitled to vote on the proposal in order to submit a proposal. Notably, the new law does not apply to director nominations and procedural resolutions ancillary to conduct of the meeting.

The Texas requirements of SB 1057 resemble those of SEC Rule 14a-8(b), which provides federal eligibility thresholds for shareholders seeking to submit proposals. However, in many cases the Texas law could impose significantly higher bars for shareholders than the federal rule, which only requires ownership of between $2,000 and $25,000 of a company's voting shares, depending on the length of ownership. It is currently unclear how the state and federal laws will interact.

A company that wishes to adopt the new Texas thresholds, which become effective September 1, 2025, must provide notice to shareholder of the proposed amendment in its proxy statement prior to adopting the amendment, and must include in its proxy statement the process by which a shareholder (or group of shareholders) can submit a proposal on a matter requiring shareholder approval, including how to contact other shareholders. It should be noted, however, that important questions remain about interpretations of state corporate law that seek to modify or supersede federal rules regarding the submission of shareholder proposals, and that would transpose new rights and obligations onto companies incorporated under another states' corporate laws.[10]

Implications for the Future

The influx of financial institutions into Texas is more than just symbolic; it represents a substantive shift in the U.S. financial landscape. Nasdaq's new regional headquarters in Dallas is expected to serve as a hub for its clients and the wider community, providing a premium space to celebrate the state's leaders, entrepreneurs, and innovators. This move is also likely to enhance Nasdaq's reach among Texas' leading industries, including energy and manufacturing. The financial sector in Texas is on an upward trajectory, with Nasdaq's new regional headquarters in Dallas serving as a significant milestone. This development, along with other financial institutions' moves to the state, highlights Texas' evolving role as a key player in the U.S. financial markets.

Proxy Advisor Updates: Board Diversity Expectations in Flux—What Public Companies Know Now

In anticipation of 2025 proxy season, two U.S. proxy advisory firms and three U.S. asset managers have announced revisions to their diversity-oriented voting policies that were long viewed as setting forth their baseline expectations. These shifts follow hard on the heels of the U.S. Court of Appeals for the Fifth Circuit's decision striking down Nasdaq's board-diversity listing rule (as described above and in a previous Insight) and executive orders and agency initiatives aimed at curtailing private-sector DEI programs.

Taken together, the changes create both opportunity and risk: companies may feel less external pressure to publish human capital-related data, yet many investors still believe cognitive and experiential diversity remain critical to effective oversight. Below is a summary of the most relevant developments related to board diversity expectations.

Board Diversity Voting Policy Changes

1. **Institutional Shareholder Services ("ISS"):** Effective for shareholder meeting reports issued on or after February 25, 2025, ISS has removed gender, racial, and ethnic diversity from the factors it considers when recommending votes on director elections under its U.S. benchmark and specialty policies. The proxy adviser will no longer automatically recommend "against" the nominating committee chair of a board lacking women or, for Russell 3000/S&P 1500 boards, lacking apparent racial or ethnic diversity. All other director-related policies (e.g., independence, overboarding, responsiveness) remain in force.

2. **Glass Lewis:** In a February 19, 2025, client communication, the firm announced it was reevaluating its approach in light of Department of Justice guidance on private-sector DEI efforts and rising anti-DEI litigation risk. Subsequently, in March 2025, Glass Lewis announced that it will continue to consider board diversity when making voting recommendations. Glass Lewis recommends: (1) "against" the nominating committee chair of any Russell 3000 board that is less than 30% gender-diverse or, outside the Russell 3000, has no gender-diverse directors; and (2) "against" the nominating committee chair of any Russell 1000 board lacking at least one director from an under-represented racial or ethnic community. However, proxy reports will flag these recommendations with a "For Your Attention" marker, explicitly instructing investors that they may disregard diversity-based opposition if they do not share the underlying concern.

3. **BlackRock:** The 2025 guidelines eliminate prior numeric aspirations for board diversity (30% overall diversity, two women, and one under-represented director for S&P 500 companies) and the disclosure-based "comply or explain" trigger. Instead, BlackRock reserves the right to withhold support if an S&P 500 board is an "outlier" relative to "market norms"—noting that 98% of S&P 500 companies have already achieved at least 30% diversity.

4. **Vanguard:** Vanguard's revised policy strikes language that boards should "at a minimum" include gender, racial, and ethnic diversity and removes an explicit commitment to vote against nominating chairs that fail to act. The fund family will now focus on whether the board is "fit for purpose" through a mix of skills, experience, perspective, and personal characteristics that deliver "cognitive diversity." Vanguard may oppose the nominating committee chair only if board composition or disclosure is inconsistent with applicable market norms.

5. **State Street:** State Street has dropped quantitative triggers for votes against Russell 3000 boards with fewer than 30% women or S&P 500 boards without a racial or ethnic minority director. Although the new guidelines emphasize that effective oversight "necessitates a diversity of backgrounds, experiences, and perspectives," they contain no enforcement mechanism tied specifically to demographic metrics.

Key Takeaways

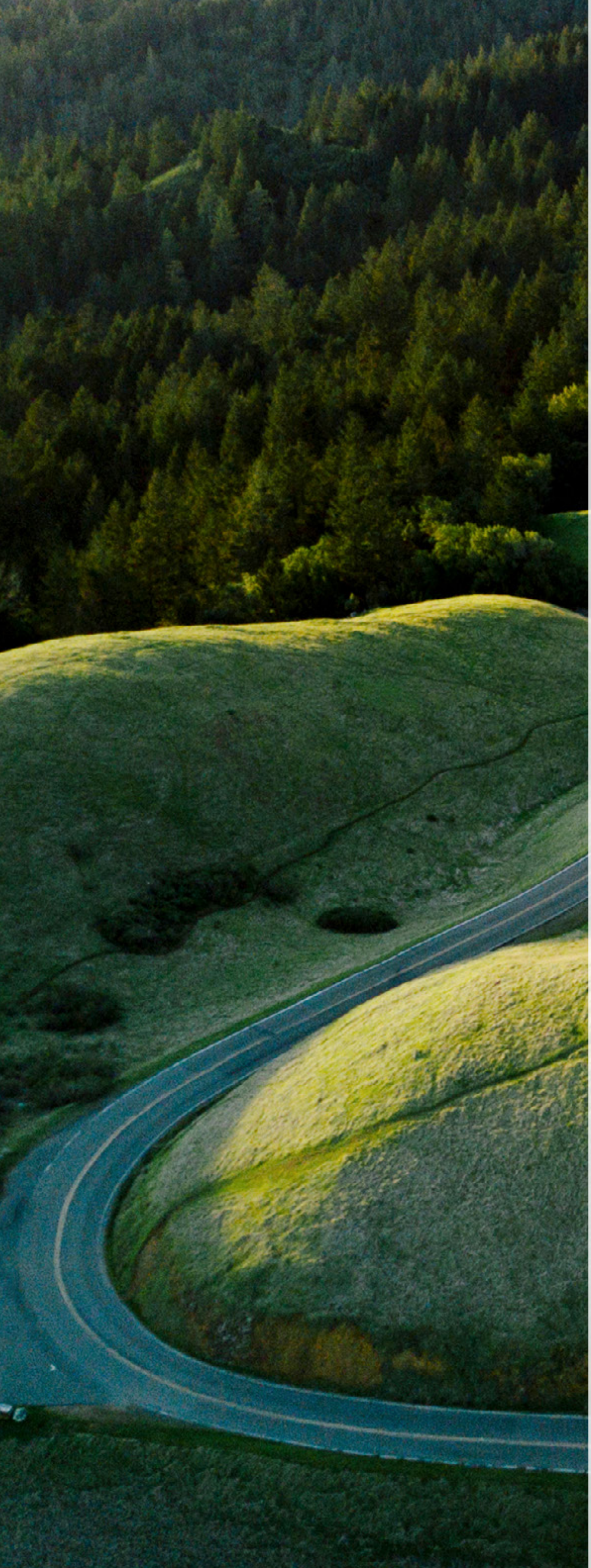
The most prominent U.S. proxy advisers and asset managers have substantially relaxed or suspended prior quantitative board diversity expectations, reflecting heightened scrutiny of DEI initiatives. Notwithstanding these changes, "cognitive" or "experiential" diversity remains a factor investors may still consider when evaluating director nominees, especially where a company falls markedly outside peer norms. In contrast to the retrenchment among U.S. investors, several large European managers have furthered diversity requirements for 2025. For example, Allianz has extended its 30% gender diversity expectation to small- and mid-caps and BNP Paribas increased its gender requirement from 35% to 40%. U.S. issuers with a sizeable non-U.S. shareholder base should continue monitoring these policies. Given the absence of uniform standards, issuers must develop a bespoke approach to disclosure and engagement, grounded in their specific shareholder base, risk profile, and strategic objectives. If you have any questions regarding these recommendations, please contact your V&E team.

California Climate Laws Litigation Updates

Litigation regarding the legal validity of SB 253 and SB 261 is ongoing in the U.S. District Court for the Central District of California, as further discussed in our recent Insight. On February 3, 2025, the court dismissed the claims that SB 253 and SB 261 violate the Supremacy Clause and the limitation on extraterritorial regulation. Although this represented an interim win for California, the plaintiffs' First Amendment claim still stands, and litigation over the constitutionality of the laws will continue.

More recently, on February 25, 2025, the plaintiffs filed a motion for preliminary injunction as to the First Amendment claims, arguing that, absent a preliminary injunction, they will suffer irreparable harm as they will be compelled to speak on the "controversial issue" of climate change. The parties' joint proposal for a briefing schedule was accepted by the judge; under that schedule, the California Air Resources Board's ("CARB") opposition to the preliminary-injunction motion was filed on April 7, 2025, and Plaintiffs' reply was filed on April 21, 2025. The court has not yet issued a decision on the motion. The trial in this case is set for October 2026.

We will continue to follow developments related to these laws.



CARB LCFS Amendments

After much anticipation, CARB adopted amendments to California's Low Carbon Fuel Standards ("LCFS") Program on November 8, 2024, aiming to reduce the carbon intensity of California's transportation fuel pool by 30% by 2030 and by 90% by 2045.

As we discussed in a previous Insight, the LCFS program is a market-based mechanism that incentivizes the production and use of cleaner transportation fuels through a credit and deficit system. Low-carbon fuels below the carbon intensity benchmark generate credits, while fuels above the carbon intensity benchmark generate deficits. Credits and deficits are denominated in metric tons of GHG emissions (avoided or emitted based on the baseline and the corresponding reductions) and credits can be sold, banked, or used to satisfy a compliance obligation.

According to a November 2024 CARB statement, the LCFS Program has been "very effective" since its creation and has displaced 70% of the diesel used in California or 320 million metric tons of CO_2.[11] The LCFS Program has also led to a massive increase in renewable natural gas ("RNG") production in recent years, as RNG continues to increase its share of fuel used for natural gas powered vehicles. Although the adopted changes do not include the drastic changes to eventually phaseout pathways for crediting biomethane/RNG used in vehicles as originally proposed, the November 2024 amendments make the following key changes:

- **Updated Carbon Intensity ("CI") Targets:** The LCFS amendments work to increase the stringency of the Program with reduced CI targets and the creation of an "automatic acceleration mechanism," which, if triggered, will advance all annual CI benchmarks by one year. In addition to setting CI benchmarks for 2031 through 2045, CARB updated the CI benchmarks for gasoline and fuels used as a substitute for gasoline as follows:

Year	Previous Average CI (gCO_2e/MJ)	New Average CI (gCO_2e/MJ)
2025	85.77	76.60
2026	84.52	75.16
2027	83.28	73.72
2028	82.04	72.28
2029	80.80	70.84
2030	79.55 (2030 and subsequent years)	69.40

- **Focus on Electric Vehicles and Related Infrastructure:** The amendments expand incentives for the creation of zero-emission vehicle infrastructure in alignment with California's 2022 Scoping Plan Update.

- **Biomethane Crediting:** For projects that break ground after December 31, 2029, the amendments phase out pathways for crediting biomethane used in compressed natural gas for vehicles after December 31, 2040, and for projects that break ground before January 1, 2030, the amendments reduce the total number of crediting periods for avoided methane emissions to two (rather than three) consecutive 10-year periods. The amendments also update deliverability requirements and provide for a book-and-claim accounting of biomethane for electricity for EV charging.

- **Phase Out Eligibility of Fossil Fuel-Derived Hydrogen:** Beginning January 1, 2030, hydrogen dispensed as a vehicle fuel must be at least 80% renewable. From January 1, 2035, hydrogen produced from fossil fuels will not be eligible for credit generation.

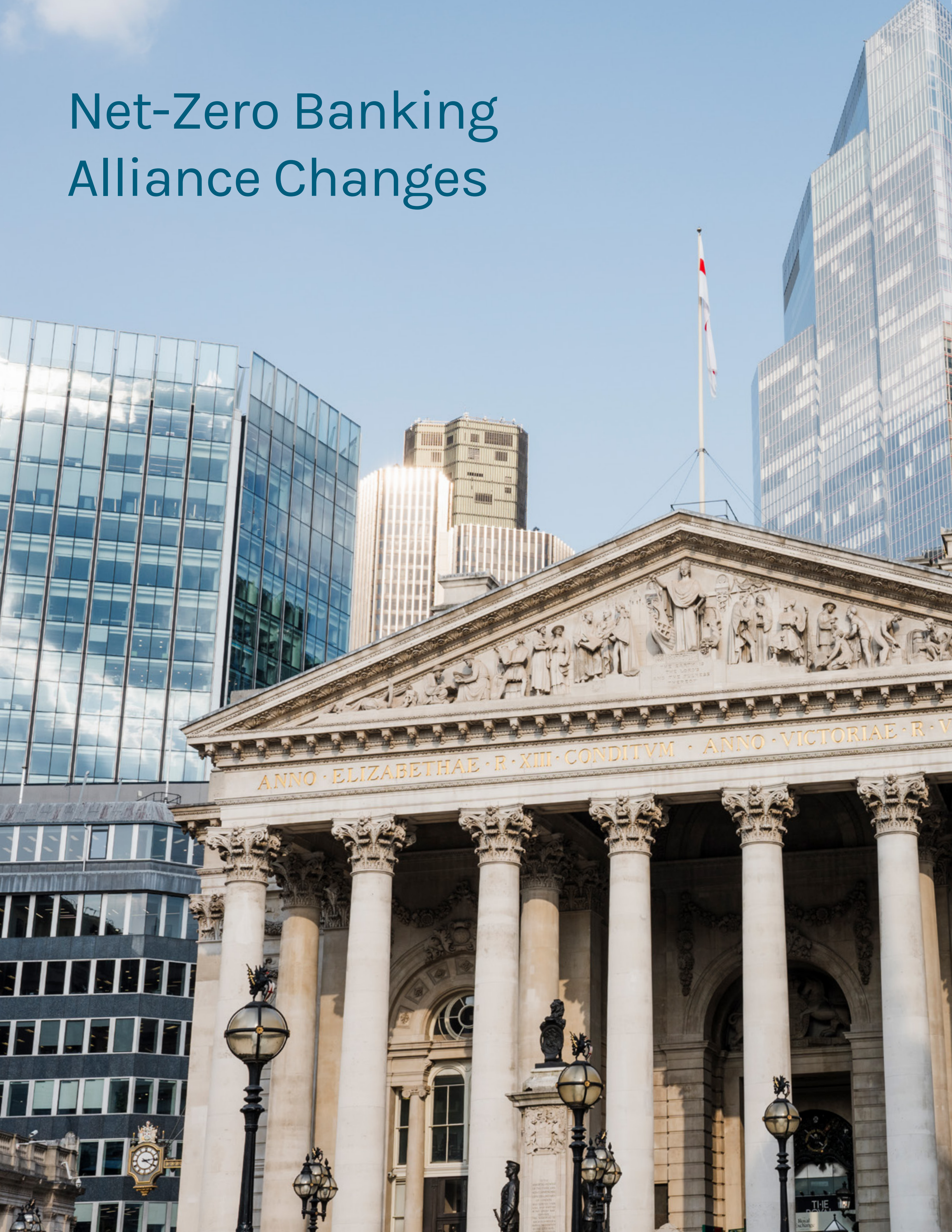
- **Changes to Eligibility of Biofuels for Credit Generation:** Pursuant to the amendments, biodiesels derived from soybean oil, canola oil, and sunflower oil will only be eligible for credit generation for up to 20% of a producer's total energy mix.

These LCFS amendments have been subject to much debate and are some of the most significant updates the LCFS has seen since it was first adopted in 2011. These changes are likely to have drastic impacts and stakeholders have already expressed concern regarding their potential impacts on the cost of transportation fuels in California. On the other side of the spectrum, environmental groups have already challenged CARB's approval of the amendments, arguing that CARB's environmental impact analysis was inadequate and violated the California Environmental Quality Act.

CARB submitted the approved rulemaking package to the Office of Administrative Law ("OAL") on January 3, 2025. However, on February 18, 2025, OAL issued a routine disapproval of amendments to the LCFS regulation on technical grounds, not on the merits of the regulation. CARB has 120 days to make the non-substantive revisions and resubmit the regulation for OAL's approval and the current regulations will remain in effect until such time.

We will continue monitoring these LCFS developments. Please contact the V&E Team to discuss these matters and their implications to your business.

Net-Zero Banking Alliance Changes



The Net-Zero Banking Alliance ("NZBA") is a bank-led, United Nations-convened group of global banks "committed to aligning their lending, investment, and capital markets activities with net-zero greenhouse gas emissions by 2050."[12] Founded in 2021, the NZBA rapidly gained both popularity and momentum, with many U.S. banks joining the group and committing to transitioning their financing activities to align with net zero pathways. However, in early January of this year, J.P. Morgan exited the NZBA, marking the latest U.S. bank departure from the coalition.

What is the NZBA?

The NZBA falls under the Glasgow Financial Alliance for Net Zero ("GFANZ")—an umbrella group, backed by the United Nations, which brings together various financial institutions committed to decarbonizing the global economy. Other coalitions fall under the GFANZ umbrella, including the Net Zero Asset Managers Initiative ("NZAM") and the Net Zero Asset Owner Alliance ("NZAOA"), among others. A prerequisite of joining the NZBA is the signing of a "Commitment Statement" and a pledge to follow the Guidelines for Climate Target Setting for Banks in setting targets and reporting processes. The former provides that the bank will, among other things, set targets for 2030 (or sooner) and a 2050 target, and annually publish absolute emissions and emissions intensity.

What Banks Have Left?

J.P. Morgan is not the first U.S. bank to leave the NZBA, with exits from Citigroup, Bank of America, Goldman Sachs, Morgan Stanley and Wells Fargo preceding its departure. However, J.P. Morgan's departure means that all major U.S. banks have now left the coalition. The NZBA has, of late, come under increasing pressure from politicians as part of a broader anti-ESG campaign. More specifically, such politicians have been warning banks and other financial institutions that their participation in climate-related alliances, such as NZBA, could result in potential legal violations and exclusion from state business. Coupled with a significant shift in the landscape of climate-focused banking, the result has been a mass exodus.

What's Next?

Those banks that have departed NZBA have been quick to express that they plan to maintain their commitments to their net zero goals. However, the struggle of the NZBA to retain key players raises questions about the efficacy of such coalitions. Additionally, in April 2025, following the departure of several banks and financiers, the NZBA voted to abandon its 1.5°C target. NZBA's new pledge is somewhat less onerous—members' targets "*should* align with the goals of the Paris Agreement, aiming to limit global warming to well below 2°C, striving for 1.5°C" (emphasis added). The change has been touted as a shift from target-setting to implementation, allowing the NZBA to aid its members with progress toward their climate-related strategies. Notwithstanding this, it appears that changing political tides in the U.S.—to include targeted challenges on coalitions such as the NZBA—alongside an environment of better returns in oil and gas, as well as the member departures aforementioned, has led the NZBA to soften its climate ambitions. In a "sign of the times," NZBA's changes reflect the ever-evolving climate landscape and shifts in momentum.

Update on EU Sustainability Agenda Reform

	Current CSRD	Omnibus Revision
Large Undertaking	EU entities meeting two of the following: • Turnover over €50 million • Balance sheet above €25 million • More than 250 employees	EU entities with 1,000 employees and either: • Turnover over €50 million, or • Balance sheet above €25 million
Third-Country Undertaking	Any entities with net EU turnover of at least €150 million and either: • A subsidiary in the EU within scope of CSRD, or • An EU branch with turnover of at least €40 million	Any entities with net EU turnover of at least €450 million and either: • An EU subsidiary that qualifies as a large undertaking, or • An EU branch with turnover of at least €50 million

Over the past few years, the European Union ("EU") has pioneered a suite of regulations advancing the reporting and disclosure of climate- and sustainability-related targets by businesses and investors. Now, amidst shifting political winds regarding ESG on both sides of the Atlantic, the European Commission has proposed reforms to several of its regulations in its February 26, 2025 "Omnibus Package" ("Omnibus"). The reforms are aimed at streamlining and harmonizing the different pieces of the EU sustainability agenda, and affect the Corporate Sustainability Reporting Directive ("CSRD"), the Corporate Sustainability Due Diligence Directive ("CSDDD"), the Carbon Border Adjustment Mechanism ("CBAM"), and the EU Taxonomy. While the reforms are subject to further changes before they become law, the following discusses some of their most significant implications for U.S. companies operating in or trading with Europe.

Under the Omnibus, the CSRD's reporting thresholds would be adjusted to reduce the scope of its coverage by as much as 80%. The coverage categories most relevant to U.S.-based multinational companies would see the changes noted in the chart on the previous page.

The Omnibus would also delay the implementation timeline of the CSRD, with the first required reports pushed from those on FY2025 activities to reports on FY2027, due in 2028. While the extent of reporting data expected in CSRD reports could also see some changes, key aspects of the framework, such as its double materiality standard and limited assurance requirements, are maintained in the Omnibus.

The Omnibus would also adjust the phase-in of the CSDDD to two waves of application:

- **Wave 1**: EU entities with at least 3,000 employees and greater than €900 million in worldwide net turnover, as well as non-EU entities with EU net turnover greater than €900 million, are covered by CSDDD beginning July 2028. Their first reports, covering FY2029 activities, are due in 2030.
- **Wave 2**: EU entities with at least 1,000 employees and greater than €450 million in worldwide net turnover, as well as non-EU entities with EU net turnover greater than €450 million, are covered by CSDDD beginning July 2029. Their first reports, covering FY2030 activities, are due in 2031.

Implementation of the CBAM would also be delayed from 2026 to 2027, and its requirements would be streamlined to allow companies to use standard values in emissions calculations, account for carbon prices paid in third-party countries, and expand the use of the *de minimis* exemption to exempt reporting for any imported goods with an annual net mass of less than 50 tonnes.

EU Taxonomy disclosures would also be affected. Whereas under the current regime, all entities within scope of the CSRD are required to report Taxonomy disclosures, the Omnibus would limit Taxonomy reporting to companies with more than 1,000 employees and a net EU turnover of more than €450 million. The extent of these disclosures would be significantly streamlined, as well, with required data points reduced by close to 70% and reporting further exempted for activities deemed immaterial by involving less than 10% of the entity's total EU turnover.

Overall, the Omnibus package is an effort to streamline the requirements of the EU's sustainability agenda, reducing regulatory burden while still encouraging corporate accountability and transparency by focusing on the largest companies with the greatest climate impacts. U.S. companies should monitor the developments regarding these reforms and assess the potential impacts on their dealings with Europe.

Please see our recent Insight for more details on the Omnibus package and its potential impacts on EU regulations and U.S.-based companies.

Climate Superfund Laws

On December 26, 2024, New York Governor Kathy Hochul signed the Climate Change Superfund Act ("CCSA" or the "Act") into law, making New York the second state to issue this type of far-reaching climate Superfund legislation. The law requires certain fossil fuel producers and refiners with sufficient connections to New York to pay into a state "climate Superfund" an amount commensurate with the entity's past global GHG emissions over an 18-year period. The New York State Department of Environmental Conservation ("NYSDEC") will collect $75 billion from these entities over the next 25 years. New York intends to use these funds to pay for climate change-related infrastructure projects and other climate-related expenses.

The CCSA attempts to create a complex mechanism, the "Climate Change Adaptation Cost Recovery Program," to recover costs that will then be held in a fund, akin to the federal "Superfund" program established under the Comprehensive Environmental Response, Compensation, and Liability Act. Under the Act as currently enacted, NYSDEC has until December 26, 2025, to promulgate regulations implementing the Act, including adopting methodologies to identify responsible parties, determine their covered GHG emissions, and issue notices of cost recovery demands. Payments by responsibilities parties, which can be paid in full or in annual installments, are due on September 30, 2026, and annually thereafter.

The CCSA prompted more questions than it answered and, on January 8, 2025, the Act's sponsor in the New York legislature proposed a bill to amend the CCSA. The proposed amendments include significant procedural changes to the existing CCSA and attempt to address some of the concerns that have already been raised in opposition to the Act. Further, on February 6, 2025, a coalition of 21 states and a group of fossil fuel-industry associations challenged the Act in the District Court for the Northern District of New York, challenging the act under the following legal theories: (1) equal sovereignty protected by the Supremacy Clause of the U.S. Constitution; (2) preemption of the federal Clean Air Act; (3) the Commerce Clause; (4) the Due Process Clause of the Fourteenth Amendment; (5) the Due Process Clause of the New York State Constitution; (6) the Equal Protection Clause of the Fourteenth Amendment; (7) the Eighth Amendment prohibition against excessive fines; (8) the Takings Clause of the Fifth Amendment; and (9) the Takings Clause of the New York State Constitution.

The CCSA, and other similar laws, face additional uncertainty following President Trump's "Protecting American Energy From State Overreach" executive order. The executive order, which was designed to advance President Trump's agenda of achieving "American energy dominance," directs the Attorney General to prioritize taking action against state laws that address climate change, ESG initiatives, environmental justice, GHG emissions, and the establishment of funds to collect carbon penalties or carbon taxes. The executive order specifically takes aim at the recent Vermont and New York laws, and describes them as "extortion laws." Nearly a month after President Trump issued the executive order, the administration sued Vermont in the U.S. District Court for the District of Vermont and New York in the U.S. District Court for the Southern District of New York alleging that both state laws are unconstitutional on various grounds. As described in more detail in our recent Insight, both lawsuits seek a permanent injunction of the applicable climate Superfund act as well as a declaration that the laws are unconstitutional and unenforceable. These lawsuits add to the current uncertainty related to state climate-related legislation.

Please see our recent Insight for more information on the New York Climate Superfund Law, its potential impacts and the state's proposed amendments.

We will continue monitoring climate-related state laws and related litigation. Please reach out to your Vinson & Elkins team to discuss these matters and their implications for your business.

Greenwashing Update

Catching Up on Cases

Berrin v. Delta Air Lines, Inc.

In May 2023, a class action lawsuit was filed against Delta Airlines ("Delta") alleging that the airline had made false and misleading representations regarding the environmental effects of its business. As we reported that year, Delta filed a motion to dismiss, arguing that the plaintiffs' claims were preempted by the Airline Deregulation Act ("ADA") or otherwise invalid where plaintiffs had an adequate remedy under the California Consumer Legal Remedies Act ("CLRA"). Delta also asserted that plaintiffs lacked standing to bring their claims because they had no intent to purchase future Delta flights, and therefore were not at risk of injury.

In March 2024, the U.S. District Court for the Central District of California denied the motion to dismiss as to Delta's preemption and CLRA arguments, but granted dismissal regarding two of the plaintiffs' claims for lack of standing—with leave to amend their pleadings. In April, the class representative plaintiff amended her complaint to assert that she was a "longstanding and loyal Delta customer" but no longer intended to purchase flights from the airline in the future.[13] In December 2024, the district court held that this was sufficient to support an injury of refraining from purchasing future Delta flights due to environmental concerns. Trial has been set for 2026.

ASIC v Vanguard Investments Australia Ltd.

The Australian Securities and Investments Commission ("ASIC") initiated enforcement proceedings against Vanguard Investments Australia ("Vanguard") in the Federal Court of Australia on July 24, 2023. ASIC asserted that Vanguard misled the public with environmental assurances relating to its Ethically Conscious Global Aggregate Bond Index Fund ("Fund"). ASIC alleged that Vanguard's representations overstated the extent of ESG screening performed on issuers, and that over 70% of the securities in the Fund were not screened against the applicable ESG criteria. On March 28, 2024, the Federal Court of Australia ruled that Vanguard had violated the Australian Securities and Investments Commission Act 2001 and later ordered the firm to pay a record A$12.9 million penalty.[14]

New Cases to Watch in 2025

Earth Island Institute v. Coca-Cola Company

In June 2021, environmental non-profit advocacy group Earth Island Institute filed suit against Coca-Cola under the D.C. Consumer Protection Procedures Act ("CPPA"). Earth Island alleged that Coca-Cola's marketing of its business as sustainable was misleading because of its production of single-use plastics and associated pollution. Earth Island took issue with both Coca-Cola's specific sustainability targets, such as its goals to use 100% recyclable packaging by 2025 and 50% recycled material in its packaging by 2030, as well as a number of more general statements regarding, e.g., the company's "leadership" in "achiev[ing] positive change in the world and build[ing] a more sustainable future for our communities and our planet."

In November 2021, the D.C. Superior Court dismissed the case for three reasons. First, it asserted that "aspirational statements" such as Coca-Cola's cannot form the basis for a CPPA action. Second, CPPA requires deception regarding a company's "goods or services," while Coca-Cola's statements referred to its corporate ethos, hopes, and philosophies, but not the product itself. Lastly, a CPPA claim could not be based on a collection of "aspirational, limited, and vague" statements.

But in August 2024, the D.C. Court of Appeals reversed the dismissal and reinstated the suit. The appellate court held that aspirational statements can be actionable because they can convey to reasonable consumers that a company is taking, or has plans to take, steps to fulfill those aspirations. Here, Earth Island's allegation that Coca-Cola is not taking those steps forms the basis for an actionable controversy. The court further held that Coca-Cola's sustainability goals were statements about its goods and services as required by CPPA. And, even if individual claims from Coca-Cola are not misleading in themselves, they can properly be considered in the aggregate. Taken together, the statements paint a picture that Coca-Cola is an environmental steward, whereas, according to Earth Island, it is an environmental scourge.[15] This dispute was sufficient to allow the case to move forward, with discovery to take place in late 2025 and dispositive motions set for the spring of 2026.

Companies should take note that even general or aspirational statements of environmental leadership or sustainability efforts can provide a basis for suit if the statements do not align with actions and business impacts.

Dorris v. Danone Waters of America

On October 13, 2022, Stephanie Dorris filed a class action lawsuit in the Southern District of New York after discovering that the Evian spring water she had purchased, labeled as "carbon neutral" by its manufacturer Danone Waters of America ("Danone"), had misled her into believing that no carbon dioxide emissions were produced in the production of the water. Dorris brought claims under consumer protection statutes of New York, Massachusetts, and California, as well as common law claims, seeking over $5 million in damages.

Plaintiffs alleged that they paid a premium price for Evian water based in part on its advertised sustainability, which is misleading in light of the water's actual impact. Specifically, Danone's practice of achieving carbon neutrality through the purchase of carbon offsets was identified as "inherently problematic," as plaintiffs alleged that the carbon offsetting market is "awash with challenges, fuzzy math and tough-to-prove claims with a long history of overpromising and underdelivering." The plaintiffs took further issue with the fact that carbon offsetting projects may not take place for decades after their offset credits were issued.

In January 2024, the district court denied a motion to dismiss as to plaintiffs' claims under Massachusetts and California consumer protection statutes. The court declined to rule as a matter of law that the term "carbon neutral" lacked the capacity to mislead consumers. As a "technical word . . . carrying multiple meanings," carbon neutrality claims could mislead customers who understood it to mean that the products resulted in no net addition of carbon dioxide to the atmosphere, when in fact the products' emissions were counterbalanced with offsets. Furthermore, "carbon neutral" was the type of "general environmental benefit claim" that the FTC had warned against in its Green Guides.[16]

But by the end of the year, the district court had walked back its ruling. In a reconsideration order, the court began by stating that "carbon neutrality" was not misleading simply because it possessed multiple definitions. And, in this case, the Evian product packaging contained key context clues about its intended meaning of carbon neutrality, including prominently displaying that the water was sourced from the French Alps, a disclaimer that "there is no such thing as a 'zero carbon' product," and a Carbon Trust logo linking to an explanation of what carbon neutral means. Additionally, the court revised its holding that the FTC Green Guides supported the plaintiffs' claims. "Carbon neutral" is not mentioned in the FTC's regulations, but the court determined that it referred to a more precise and concrete concept than forewarned terms like "eco-friendly" or "eco-smart." On these grounds, the court dismissed the rest of the claims in November 2024.[17]

State of Maine v. BP p.l.c.

On November 26, 2024, the State of Maine filed suit against major oil and gas companies, including BP, Chevron, ExxonMobil, and Shell, seeking to hold the companies liable for the alleged climate change impacts caused, in part, by the defendants' "successful climate deception campaign." The state alleged that these companies knew the dangers of fossil fuel products, but acted to obscure those harms and deceive the public to expand their use, ultimately contributing to climate change effects with physical, environmental, and economic impacts in Maine. The state alleged proprietary and *parens patriae*-type injuries, such as sea level rise, ocean acidification, reduced air quality, and economic threats to local industries like fishing and forestry. The suit was brought under common law negligence and nuisance causes of action as well as violation of the Maine Unfair Trade Practices Act.

This is not the first example of a state or local government entity suing oil companies for climate accountability.[18] But it may be the most prominent example of a new legal strategy: labeling a company's retreat from voluntary sustainability targets as greenwashing. In its complaint, the state points to advertising campaigns attesting that the companies are substantially invested in lower-carbon technologies and renewable energy sources, claiming that these statements do not square with the fact that the corporations spent less than 3% of their total capital on low-carbon energy sources. The state also highlights individual companies withdrawing pledges to reduce oil production year-over-year for a decade and cutting emissions reduction targets by up to half as examples of greenwashing activity.[19] If this case gains traction, it could pave a path for litigants to connect any pullback from a company's sustainability targets to greenwashing and consumer protection causes of action.

Ramos v. Amazon.com, Inc.

On March 14, individuals from California, Florida, Idaho and New York filed suit in the Western District of Washington against Amazon, alleging that the corporation greenwashed claims about the sustainability of its "Amazon Basics" line of paper products. The plaintiffs are suing under various state fraud causes of action and consumer protection statues, and are seeking damages and disgorgement, attorneys' fees, and an injunction preventing Amazon from continuing its "deceptive, fraudulent, and unfair business practices."[20]

The controversy arises over Amazon's "Basics" toilet paper line, which, like Amazon's sustainability-minded "Aware" toilet paper, features "Climate Pledge Friendly" and Forest Stewardship Council logos. Despite both products bearing the same sustainability claims, the Aware toilet paper is derived from 100% bamboo from 100% FSC forests, while the Basics paper is created from "100% virgin fiber derived from clearcutting and burning" its source, Canada's boreal forest. Plaintiffs claim that this convolution of Amazon's sustainable product certifications demonstrates the claims' "useless[ness]" for consumers, and violates both the FTC Green Guides as well as Amazon's own advertising guidelines. Because Amazon has direct access to sustainable sources for paper products, the plaintiffs argue that the company must either drop its sustainability claims for the Basics line or source these products from greener sources.

The complaint's specific allegations were joined by a more general illustration of Amazon's devotion of "massive . . . marketing resources" toward positioning itself as a leader in corporate environmental stewardship. According to the plaintiffs, this activity proves that Amazon knows its delivery on climate and sustainability promises is important to its customers. Companies with ambitious sustainability portfolios should take special notice that their claims are grounded in fact. Certifications and advertisements relating to specific goods and services should be used in a rational and consistent fashion, in order to prevent misunderstanding by consumers.

Endnotes

1 *https://www.epa.gov/newsreleases/epa-places-171-deia-and-environmental-justice-employees-administrative-leave*.

2 Agencies listed as defendants in the suit include the U.S. Department of Agriculture, the DOE, the U.S. Department of the Interior, the U.S. Environmental Protection Agency, the U.S. Department of Housing and Urban Development, and the OMB.

3 *Woonasquatucket River Watershed Council v. U.S. Dep't of Ag.*, No. 1:25-cv-00097, ECF No. 45 (D.R.I. Apr. 15, 2025).

4 On April 21, 2025, several states that had intervened in the case in support of the climate-related disclosures indicated their intent to continue defending the rule and requested the Court hold the case in abeyance until the SEC decides and discloses how it intends to proceed with the rule.

5 Pay Ratio Disclosure, 80 Fed. Reg. 50104, 50105 (Aug. 18, 2015), *https://www.federalregister.gov/documents/2015/08/18/2015-19600/pay-ratio-disclosure*.

6 Testimony of Paul S. Atkins Chief Executive Officer Patomak Global Partners, LLC Before the United States House of Representatives Committee on Financial Services (July 9, 2015), *https://democrats-financialservices.house.gov/uploadedfiles/07.09.2015_paul_atkins_testimony.pdf*.

7 Commissioner Mark T. Uyeda, Remarks at the "SEC Speaks" Conference 2025 (May 19, 2025) *https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-051925?utm_medium=email&utm_source=govdelivery*.

8 Interim Final Rule: Questions and Answers, Financial Crimes Enforcement Network, *https://www.fincen.gov/boi/ifr-qa*.

9 It is unclear from the wording of the law if this law is intended to impose new rules onto companies headquartered in Texas or listed on a Texas stock exchange but incorporated in another state (e.g., Delaware). What is clear, however, is this law would effectively create a higher standard for submission than that of SEC Rule 14a-8, which potentially poses important federalism questions that remain to be settled.

10 Should your company consider availing itself of this new right under Texas law, please reach out to your Vinson & Elkins team to discuss some key considerations of this novel approach.

11 Press Release, CARB, CARB updates the Low Carbon Fuel Standard to increase access to cleaner fuels and zero-emission transportation options (Nov. 8, 2024), *https://ww2.arb.ca.gov/news/carb-updates-low-carbon-fuel-standard-increase-access-cleaner-fuels-and-zero-emission*.

12 *Net-Zero Banking Alliance – United Nations Environment – Finance Initiative*.

13 Order Denying Partial Motion to Dismiss, *Berrin v. Delta Air Lines, Inc.*, No. 2:23-cv-04150 (C.D. Cal. Dec. 11, 2024).

14 Media Release, ASIC, ASIC wins first greenwashing civil penalty action against Vanguard (Mar. 28, 2024), *https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-061mr-asic-wins-first-greenwashing-civil-penalty-action-against-vanguard/*; Media Release, ASIC, ASIC's Vanguard greenwashing action results in record $12.9 million penalty (Sept. 25, 2024), *https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-213mr-asic-s-vanguard-greenwashing-action-results-in-record-12-9-million-penalty/*.

15 *Earth Island Institute v. The Coca-Cola Company*, 321 A.3d 654 (D.C. 2024).

16 Order Partially Granting Defendant's Motion to Dismiss, *Dorris v. Danone Waters of America*, No. 7:22-cv-08717 (S.D.N.Y. Jan. 10, 2024).

17 Order Granting Defendant's Motion to Reconsider, *Dorris v. Danone Waters of America*, No. 7:22-cv-08717 (S.D.N.Y. Nov. 14, 2024). Because the plaintiffs did not file an amended complaint in the allotted time, their claims were dismissed with prejudice and the suit was closed in April 2025. Order, *Dorris v. Danone Waters of America*, No. 7:22-cv-08717 (S.D.N.Y. Apr. 14, 2025).

18 *See, e.g., City & Cty. of Honolulu v. Sunoco LP*, 537 P.3d 1173 (Haw. 2023).

19 Complaint, *State of Maine v. BP P.L.C.*, No. 2:25-cv-00001 (Me. Super. Ct. Nov. 26, 2024).

20 Complaint, *Ramos v. Amazon.com, Inc.*, No. 2:25-cv-00465 (W.D. Wash. Mar. 14, 2025).

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